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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS. 3/F
425 Eye Street N.W.
Washington, D.C. 20536

File: EAC 01 223 58082 Office: VERMONT SERVICE CENTER

Date: JAN 06 2004

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

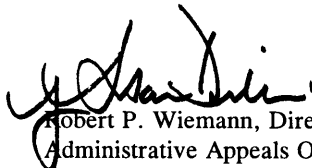
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The petitioner's motion to reopen was granted, and the previous decision of the director affirmed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a law office. The office has six employees and reports a net annual income of \$300,000. The petitioner seeks to employ the beneficiary as a paralegal for a period three years. The director determined that the proffered position did not qualify as a specialty occupation, and that the beneficiary was not qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief and additional information. Counsel states, in part, that: a baccalaureate degree, or higher, is normally the minimum requirement for entry into the proffered position; the nature of the specific duties of the position is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate of higher degree; and she normally requires a degree or its equivalent for the position.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and

health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

When determining whether a particular job qualifies as a specialty occupation, the AAO considers the specific duties of the offered position, combined with the nature of the petitioning entity's business operations. The duties of the proffered position were detailed as follows, with the filing of the I-129 petition:

The paralegal will develop long-term management policies and strategies for attracting and cultivating refugee and asylee clients from African, Middle Eastern, and other cultures. He will counsel and develop policy regarding treatment of these individuals by the firm. He will engage in editorial consulting, i.e. developing and editing articles for the purpose of publishing in various legal and other journals. He will act as advisor and liaison between the firm and international nurse recruiting agencies and sponsors. He will screen all incoming resumes, and advise on [sic] the management of processing nurses who are selected for sponsorship.

He will further research immigration law and prepare, under supervision, documents such as the I-140, I-130, I-485 or Labor Certification to assist the

attorney. He will also direct and coordinate the activities of other law office employees. He will specialize in Immigration Law.

To address our business needs at this time, we require the professional services of a Senior Paralegal at our office in Washington, D.C. This position requires an individual processing a Bachelor's degree [in] English, Psychology or Sociology; he needs to have experience with foreign cultures and counseling. The primary duties of the individual in this position will thus include:

- Managing the case load, making assignments to junior paralegals[;]
- Managing the office[;]
- Performing research and developing legal memoranda, researching and editing articles for publication[;]
- Acting as liaison for major clients and congressional contacts[; and]
- Managing and advising on intercultural counseling for transition of hundreds of foreign registered nurses to the United States[.]

Subsequent to the filing of the I-129 petition, the director requested additional evidence from the petitioner. Specifically, the director asked that the petitioner submit: evidence that the beneficiary qualifies to perform the duties of a specialty occupation; a copy of the beneficiary's college transcripts; an explanation of how the beneficiary's education is related to the offered position; additional evidence of training and/or experience related to the proffered position; evidence that the proffered position qualifies as a specialty occupation; a detailed job description, the educational requirements of the position, and how the beneficiary's education relates to the position; evidence that in the petitioner's firm, and in the industry, a baccalaureate degree in a specific specialty is a standard minimum requirement for entry into the offered position; a list of employees holding similar positions and their educational backgrounds; and a list of current and former employees who have held the offered position along with copies of their educational backgrounds.

In response to the director's request, the petitioner provided the following statement detailing the beneficiary's duties and

how the beneficiary's education related to the position:

Because this position requires the incumbent to be sophisticated regarding multiple aspects of varying cultures, this office is in need of someone with the education and experience that [the beneficiary] possesses. Due to our numerous international clients, it is imperative this office employ a person with an [sic] extensive experience with various languages and cultures. These skills are imperative because writing and communication [sic] in multiple languages when dealing with immigration clients is unavoidable. [The beneficiary's] extensive language background, coupled with his English degree, enables him to communicate effectively in French, English, Norwegian, Luo (Kenyan language), and Swahili. He also has Swedish and Danish language abilities. This position requires that clients feel that they are able to trust the attorneys, as well as the firm. Because of his international experience, language and communication abilities, [the beneficiary] is able to offer a level of understanding to the client regarding their [sic] respective national concerns.

The person employed in this position is required to meet with clients after they have spoken with an attorney. In these meetings, the incumbent must communicate the details of the immigration procedures that will be undertaken, and the length of time that will be required in each case. Additionally, the Paralegal often provides input to an individual's specific immigration needs, and input regarding any cultural concerns that might not be generally known to the firm. Because of [the beneficiary's] international education and his prolific language ability, he is amply qualified to undertake these tasks.

Another important requirement in this position is for the incumbent to assist the attorneys in drafting legal briefs and memoranda, including applications for asylum. Additionally, he or she must concisely respond to inquiries that are received from the Immigration and Naturalization Service. These responses often require a considerable amount of research and writing. [The beneficiary's] degree in English functions as a suitable background for him to complete the research and writing tasks that are required of the position.

Many of the writing and research tasks undertaken by a person in this position require a high level of attention to historic, political, religious, and legal detail. Although [the beneficiary's] education did not

primarily focus on legal studies, his background is very applicable to this position. His course work includes studies of the History of the Middle East, which offers him and the firm a broad perspective on the culture and background of Middle Eastern immigrants, and allows him to understand the cultural and documentation barriers that these people may need to overcome. He has also extensively studied World Religions, which enables him to understand world religious conflict, and to explain these issues to attorneys. He has insight, especially with regard to religious asylum cases, as to why these immigrants are fleeing from their countries, and what types of religious issues surround their problems.

He has also taken courses in Company and Mercantile Law, which has offered him exposure to law and legal methods. As a result, he has had experience with interpreting and analyzing statutes, and can use legal reasoning in making immigration-related recommendations. In addition to these law-related courses, during his educational career he has trained in Research and Bibliography. These skills aid [the beneficiary] in compiling applicable information on clients and in maintaining records of immigration background information, as well as offering guidance and the ability to work independently.

The petitioner also provided evidence of the beneficiary's work experience, and a list of employees holding the same or similar positions with proof of their educational backgrounds.

In denying the I-129 petition, the director held that the proffered position did meet any of the four criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A), and that the beneficiary did not qualify to perform the duties of a specialty occupation.

On appeal, counsel asserts that: a baccalaureate degree, or higher, is normally the minimum requirement for entry into the proffered position; the nature of the specific duties of the position is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree; and she normally requires a degree or its equivalent for the position.

The duties of the proffered position are, indeed, those of a paralegal. In the *Occupational Outlook Handbook*, 2002-03 edition, (*Handbook*) at 214, the Department Of Labor details the duties of a paralegal:

While lawyers assume ultimate responsibility for legal work, they often delegate many of their tasks to

paralegals. In fact, paralegals-also called legal assistants- continue to assume a growing range of tasks in the Nation's legal offices and perform many of the same tasks as lawyers. Nevertheless, they are still explicitly prohibited from carrying out duties which are considered to be the practice of law, such as setting legal fees, giving legal advice, and presenting cases in court.

One of a paralegal's most important tasks is helping lawyers prepare for closings, hearings, trials, and corporate meetings. Paralegals investigate the facts of cases and ensure that all relevant information is considered. They also identify appropriate laws, judicial decisions, legal articles, and other materials that are relevant to assigned cases. After they analyze and organize the information, paralegals may prepare written reports that attorneys use in determining how cases should be handled. Should attorneys decide to file lawsuits on behalf of clients, paralegals may help prepare the legal arguments, draft pleadings and motions to be filed with the court, obtain affidavits, and assist attorneys during trials. Paralegals also organize and track files of all important case documents and make them available and easily accessible to attorneys.

In addition to this preparatory work, paralegals also perform a number of other vital functions. For example, they help draft contracts, mortgages, separation agreements, and trust instruments. They also may assist in preparing tax returns and planning estates. Some paralegals coordinate the activities of other law office employees and maintain financial office records. Various additional tasks may differ, depending on the employer.

The *Handbook* notes that there are several ways to become a paralegal, and that employers usually require formal paralegal training through an associates/bachelor's degree, or certification programs. Increasingly, employers prefer graduates of four-year paralegal programs, or college graduates with paralegal certification. Other employers, however, prefer to train college graduates with no experience, or to promote experienced legal secretaries. *Id.* at 215. It is, therefore, apparent that a baccalaureate or higher degree, or its equivalent, is not normally the minimum requirement for entry into the proffered position. Indeed, the petitioner cites the *2001 Paralegal Compensation and Benefits Report* on appeal noting that in the petitioner's geographic region, only 52 percent of paralegals hold a bachelor's degree or higher. The petitioner has failed to satisfy the first criterion of 8 C.F.R.

§ 214.2(h)(4)(iii)(A).

The petitioner has also failed to qualify the position under any of the remaining criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). As noted in the *Handbook*, and the aforementioned report referenced by the petitioner, a degree requirement is not common to the industry as a whole. The duties of the offered position are not so unique or complex that they can be performed only by someone with a degree, nor are they so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. They are, in fact, routine for paralegals in the petitioner's area of practice.

Finally, the petitioner asserts that it normally requires a degree, or its equivalent, for the proffered position. The petitioner may place whatever requirements it desires on potential employees in furtherance of its business goals and objectives. The petitioner's self imposed standards however, will not qualify a position as a specialty occupation when the position does not require the theoretical and practical application of a body of highly specialized knowledge, as is the case herein. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000). Indeed, the petitioner notes on appeal that past and present paralegals with her firm have held degrees in a number of fields: Esther Acolatse with an MA in Theology; Vera Lutterodt with a Bachelor's Degree in Business Administration and a Master of Arts in Legal Administration; James W. DiStefano with a Juris Doctor in Law from the University of Connecticut; Erika Soria with a Bachelor of Arts degree from Hood College; and Hanna Blake with a Bachelor's Degree in History from Columbia Union College. It appears that the petitioner does require a degree for the offered position, but not a degree in a specific specialty.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The issue of the beneficiary's qualifications will not be addressed as the proffered position is not a specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.